

**Comments and Responses on ARC 2350C**  
Human Services Department Rule 441—25.101(229) to 441—25.107(229)  
Received through January 26, 2016

The following person/organization provided written comments, which are included in the summary below:

1. Stephanie Kuhn, Mental Health Advocate
2. Jacki Bailey, Mental Health Advocate
3. Kelly Yeggy, Mental Health Advocate
4. Lisa Swanson, Mental Health Advocate
5. Ron Riley, Board Supervisor, Union County
6. Libby Reekers, Mental Health Advocate
7. Candi Schickel, Mental Health Advocate
8. Jeanine Scott, Technology Manager, Iowa Association of Counties (ISAC)

The Department received 46 comments from eight respondents on the proposed rules. The comments and corresponding responses from the Department are divided into seven topic areas as follows:

**A. Definitions**

1. Two comments from two respondents stated that the conflict of interest definition should end after "...impartial judgment". Two additional respondents feel that "the advocate is a professional who should be allowed to use their judgment to determine if a conflict of interest exists" and dual relationships happen frequently when providing advocate services.

**Department Response:** The Department agrees that advocates may be unable to avoid conflicts of interest. 441--25.103 (2) provides for a mechanism to monitor anticipated issues of conflict of interest. The Department has changed the definition as suggested

"Conflict of interest" means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment,

2. One respondent stated that everything after "...other treatment facility" in the county where the individual is located definition be deleted. The respondent added that DHS's proposed language does not address advocates who refuse to transfer and does not allow for short term appointment prior to six months and creates increased costs and decreased responsiveness to the client.

**Department Response:** This definition does not state that an advocate cannot request a transfer to an advocate and in another location prior to six months. 441--25.103 (1)

provides the mechanism for the advocate to request a transfer. The Department has changed the definition as suggested to provide clarity.

"County where the individual is located" means the individual's county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment and is placed in a residential or other treatment facility.

## **B. Advocate Appointment and Qualifications**

1. Three comments from three respondents stated that the qualifications for the advocate are too high. One stated they exceed the requirements in Iowa Code 229.19 and recommendations by the Judicial Council, two stated they will make the position too difficult to staff and one added they are higher than qualifications for others in the social work field.

**Department Response:** Iowa Code 229.19 instructed that the rules address minimum professional qualifications and educational requirements. Iowa Code 229.19 also includes that the advocate duties shall utilize the best practices promulgated by the Judicial Council. These rules adopt the preferred qualifications promulgated by the Judicial Council. The Department made no changes to the rules.

## **C. Advocate Assignment**

1. Two comments from two respondents stated that the rules do not allow flexibility in providing temporary coverage by another advocate when the individual who is committed is hospitalized a distance from where the individual lives.

**Department Response:** The rules do not limit the ability to assign an advocate from another county. The proposed language in 441-25.103(1) allows at any time for the advocate to request a transfer if they cannot serve an individual in an effective and efficient manner. The Department changed the definition of "County where the individual resides" to provide clarity.

2. One respondent stated some advocates are being denied payment, made to determine county of residency and told to bill the county themselves for reimbursement. The respondent suggested the rules need language that the county where the person is located SHALL pay the advocate and strengthen the language that the counties/regions are the responsible entity to seek reimbursement from other county/regions.

**Department Response:** Iowa Code Section 229.19(1) b states the committing court shall assign the advocate for the county where the patient is located and the county or region may seek reimbursement from the individual's county of residence. The advocate is an employee of the county and is paid by the county where the individual is located. Code language assigns the county or region the responsibility of seeking reimbursement. The Department has made no changes to the rules.

## **D. Advocate Responsibilities**

1. One respondent stated that sharing grievance procedure, contact information, and crisis services information at the first in person visit may not be conducive to the individual's status at the time.

**Department Response:** It is important that an individual has access to this information. An advocate must use their judgement to assure this information as well as the information required by Iowa Code and the Judicial Council is available to an individual so they understand their rights. The Department has made no changes to the rules.

2. Three comments from three respondents point out the difference in language regarding time recording in administrative rules and court documents as counties are dictating multiple ways for advocates to track time.

**Department Response:** The contents of the quarterly court report are determined by the court system, not administrative rules. Quarterly reports submitted to the court may not contain sufficient detail to generate billing units or to provide sufficient details should the individual be transferred to another advocate. The Department has made no changes to the rules.

3. One comment points out the language in 25.104(5) b & c seems redundant.

**Department Response:** The Department agrees that the language in 25.104 (5) b & c is redundant, and (b) should be deleted and the list renumbered.

25.104(5) The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

- a. Copies of quarterly reports submitted to the court.
- b. Copies of correspondence sent to and received from the individual, family members, providers and others.
- c. Releases of information.
- d. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact.
- e. Documents filed with the court electronically shall be considered as part of the individual's file.

4. One comment states the rules should require the utilization of a secure electronic health record management system for managing case files.

**Department Response:** Court rules specify that the advocate must use the court's electronic document management system (EDMS) to submit all documents to the court. Iowa code does not specify what type of files should be utilized outside of EDMS. The format is a county's decision. All individuals having access to advocate files must follow

all federal, state, and county rules and policies. The Department has made no changes to the rules.

5. Four comments from three individuals state that the rule language does not restrict access to advocate records. One respondent added that the EDMS records are confidential court records and are not accessible to any other county employee and only the advocate generated documents should be accessible and only the county supervisor should have access for auditing purposes. It was also noted that some advocates have been required to copy these records and place them in a county file.

**Department Response:** Counties must follow all state and federal laws on confidentiality. By federal law, protected health information is only accessible to employees on an as needed basis.

441—25.105(6) requires the county to provide to any employee with access to individuals' files training on state and federal laws regarding nondisclosure and confidentiality of client protected health information during and after employment and maintain in the personnel files a signed document indicating the employee's awareness of the county's policy on confidentiality.

Court rules specify that the advocate must use EDMS to submit all documents to the court. These records are stored in this system and there is not a requirement in Iowa code or administrative rules that these documents be placed in the record maintained at the county level. The Department made no changes to rules.

## **E. County Responsibilities**

1. Fifteen comments from seven individuals stated that all or parts of the rules that specify the county responsibilities violate county home rule and the requirements should not be any different than what is already in county personnel policies. These concerns included the need to have a job description in the personnel file, have a process to verify the advocate's qualifications, provide training child and dependent adult abuse reporter requirements, provide confidentiality training, and complete background checks.

**Department Response:** Iowa Code 229.19 instructed the state mental health and disability services commission to adopt rules that include but are not limited to all of the following topics:

- a. Quarterly and annual reports
- b. Data collection requirements
- c. Juvenile patient representation
- d. Grievance procedures
- e. Conflict of interest provisions
- f. Workforce coverage
- g. Confidentiality
- h. Minimum professional qualifications and educational requirements
- i. Caseload criteria

- j. Caseload audits
- k. Quality assurance measures
- l. Territory assignments

The rules address the above topics to provide statewide consistency and uniformity regarding the advocate qualifications and duties while allowing counties flexibility to include individual county policies. The Department made no changes to the rules.

2. One respondent stated that training on child and dependent adult abuse reporter requirements is inconsistent with the role of the advocate as the advocate is taking the place of attorney when the attorney withdraws.

**Department Response:** Advocates are not mandatory reporters and 441-25.105(5) does not require advocates to report suspected abuse or neglect. It requires the county to provide training to this position. This is important to provide this tool and resource to the advocate as they may be in a position to recognize suspected abuse or neglect against an individual they are providing services. The Department made no changes to the rules.

3. One respondent stated that the Judicial Council adopted a job description and counties are producing multiple job descriptions which is counterproductive to state-wide consistency.

**Department Response:** 441—25.105(2) states that the job description must follow the requirements in Iowa code 229.19 which states in Iowa code 229.19 (d)7 that the best practices promulgated by the Judicial Council must be utilized. The Department made no changes to the rules.

4. One respondent stated that the supervising entity cannot be any entity that is identified as a conflict of interest in 229.19(1)a.

**Department Response:** Iowa Code 229.19(1)a requires that the advocate not be an employee of the region or an employee of an agency providing mental health services. Iowa Code is silent on supervision of the advocate. Therefore the rules do not address who directly supervises the advocate or qualifications of the supervisor. The Department made no changes to the rules.

5. Three comments from three respondents state that the rules do not adequately address the issue of workforce coverage, particularly when there is only one advocate for each county or multiple counties. Specific concerns mentioned involved staff other than an advocate performing advocate duties on a temporary basis and coverage of advocate duties while advocate is on vacation.

**Department Response:** The Department agrees and has changed the language to clarify that an advocate must cover the caseload.

25.105(8) Provide advocate staff to cover the county's caseload at all times, according to, but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.

## **F. Data Collection Requirements**

1. Six comments from seven respondents express concerns about the need for data collection, data submission to DHS, confidentiality of the data, and funding for data collection requirements.

**Department Response:** Iowa Code 229.19 requires data collection requirements be included in the rules. 441-25.106 is consistent with the counties requirements to submit data through the mental health and disability services (MHDS) regions. The only additional information to be collected will be data related to the commitment, including date of commitment, type of commitment order, juvenile or adult, treatment facility or facilities, and date commitment is terminated. The information is provided using a unique identifier so is confidential and follows the data rules for the MHDS regions which is found in 441—25.41(331). Implementation and funding would be determined by individual counties. The Department made no changes to the rules.

## **G. Quality Assurance Process**

1. Three comments from three respondents stated that the quality assurance section was unnecessary, intrusive or redundant as it duplicated the county's employee evaluation process. One respondent stated that advocate files are confidential. One respondent asked about the source of funding for quality assurance requirements.

**Department Response:** Iowa Code 229.19 requires that the proposed rules address quality assurance measures. Quality assurance is a process that reviews the delivery of the services in the system. The performance of the individual advocate is not the subject of a quality assurance process. The Department views a quality assurance system as being separate from an employee evaluation. Any individual involved in the review of advocate files would be bound by all confidentiality laws and rules. Implementation and funding would be determined by individual counties. The Department has removed the phrase "As the employer of the advocate..." to provide clarity.

441—25.107(229) Quality assurance system. The county shall implement a quality assurance system which:

1. Annually measures and assesses advocates' activities and services.
2. Gathers feedback from stakeholders including individuals using advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.
3. Implements an internal review of individual records.
4. Identifies areas in need of improvement.
5. Develops a plan to address the areas in need of improvement.
6. Implements the plan and documents the results.